BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION

DEBORAH A. CLONCH	)	
f/k/a DEBORAH A. JOHNSON[1]	)	
Claimant	)	
VS.	)	
	)	Docket No. 1,018,350
COALITION FOR INDEPENDENCE	)	
Respondent	)	
AND	)	
	)	
VIRGINIA SURETY COMPANY, INC.	)	
Insurance Carrier	)	

ORDER

The parties appealed the December 16, 2011, Award entered by Administrative Law Judge (ALJ) Kenneth J. Hursh. The Workers Compensation Board heard oral argument on March 21, 2012.

APPEARANCES

Claimant appeared pro se. Jeff S. Bloskey of Overland Park, Kansas, appeared for respondent and its insurance carrier (respondent).

RECORD AND STIPULATIONS

The record considered by the Board and the parties' stipulations are listed in the Award.

ISSUES

Claimant alleges a June 3, 2004, work-related accidental injury. In the December 16, 2011, Award, ALJ Hursh found claimant was an employee of respondent on June 3, 2004. The ALJ found claimant was a part-time employee with an average

[1] Claimant filed her claim as Deborah A. Johnson, but on November 17, 2009, legally changed her name to Deborah A. Clonch.

weekly wage of $334.32. However, ALJ Hursh determined claimant failed to prove by credible evidence an injury arising out of and in the course of employment and that claimant failed to provide timely notice of the injury. The ALJ stated in the Award that the record contained no evidence on the issue of the nature and extent of disability. The ALJ denied an award of compensation, stating:

> The claimant failed to prove an injury arising out of and in the course of employment or timely notice of the injury. The claimant also failed to prove any disability related to the alleged injury. For these reasons, the claimant is awarded no benefits in this case.[2]

In her application for review, claimant requests review of all issues.

In its brief to the Board, respondent requests review of the following issues: (1) whether claimant met with personal injury by accident on the date alleged; (2) whether claimant's alleged accidental injury arose out of and in the course of her employment; (3) whether claimant provided sufficient and timely notice; (4) whether the employer-employee relationship existed on the date of the alleged accident; (5) claimant's average weekly wage (if applicable); and (6) the nature and extent of claimant's alleged disability or impairment, if any (if applicable). With regard to the issue of average weekly wage, respondent contends claimant's average weekly wage is $193.76. Respondent concludes its brief with the following:

> Ms. Clonch failed to meet her burden of proving an employment relationship existed with CFI [respondent] on the date she alleges she was injurred *[sic]*. The overwhelming evidence demonstrates that Ms. Clonch failed to, and in fact refused, to satisfy conditions necessary to become an employee of CFI, until August 2004. There is no statutory or case law support for restroactive *[sic]* establishment of an employee relationship, and Judge Hursh's finding that an employment relationship existed, despite his factual findings to the contrary, should be reversed. Based on review of the entire record in this claim, it is clear that Ms. Clonch has failed to meet her burden of proving she sustained personal injury by accident arising out of and in the course of emaployment *[sic]* with CFI, and that she provided sufficient and timely notice of an alleged injury pursuant to the provisions of the Kansas Workers' Compensation Act. ALJ Hursh's Award should be affirmed on these issues. Furthermore, claimant failed to provide any evidence of a causal link between her alleged symptoms and conditions and the alleged injury, and failed to produce any evidence that she sustained permanent impairment or disability as a result of her alleged injury. Accordingly ALJ Hursh's findings on these issues should be upheld, and Ms. Clonch's claim should be denied.[3]

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[2] ALJ Award (Dec. 16, 2011) at 5.

[3] Respondent's Brief at 13-14 (filed Feb. 9, 2012).

The issues before the Board on this appeal are:

1. Did claimant receive a fair and impartial hearing?

A. Did the ALJ err by failing to admit the items claimant submitted after the regular hearings as evidence?

B. Did the ALJ err by requiring claimant to depose her witnesses and by not granting claimant's request to subpoena certain witnesses, because he deemed their testimony irrelevant?

2. On the date of claimant's alleged accident, was claimant an employee of respondent?

3. If so, did claimant meet with personal injury by accident arising out of and in the course of her employment?

4. Did claimant give timely notice of the accident to respondent?

5. Did claimant suffer a permanent impairment as a result of the alleged accident?

6. What is the nature and extent of claimant's disability?

7. What is claimant's average weekly wage?

FINDINGS OF FACT

After reviewing the entire record and considering the parties' arguments, the Board finds:

Claimant filed her initial Application for Hearing on August 4, 2004. She alleged that on June 3, 2004, she was transferring a patient/client from a wheelchair into a truck when she experienced pain in the back of her neck and upper back. She listed Christopher S. Ford as the employer. An amended Application for Hearing was filed on September 20, 2004, adding Coalition for Independence (CFI), the respondent, as an employer. Claimant, who is not an attorney, has represented herself throughout this claim.

Christopher S. Ford is claimant's son and is also the patient/client that claimant was moving on June 3, 2004. Claimant testified that Mr. Ford has diffuse brain damage and has quadriplegia. He is not capable of living on his own or making decisions. Claimant alleged that her employment with CFI began on May 13, 2004, as that is the date she again became Mr. Ford's caregiver. During the two years prior to May 13, 2004, claimant was not Mr. Ford's caregiver. However, previously claimant had been employed by Independence, Inc., for seven and one-half years as Mr. Ford's caregiver. Claimant

indicated that for a period of time after May 13, 2004, she was unsure which company would be her payroll administrator as Mr. Ford's caregiver. She contacted CFI and Independence, Inc., to inquire if either of them was going to be the payroll agent.

In November 2004, the parties tried to mediate this claim, but were unsuccessful. Claimant did not pursue the claim further and on February 11, 2010, respondent filed a motion to dismiss the claim pursuant to K.S.A. 44-523(f) for lack of prosecution. In a letter dated March 18, 2010, to respondent's counsel, a copy of which was sent to claimant, the ALJ denied respondent's motion to dismiss.

On September 20, 2010, the ALJ received a letter from an attorney for Piedmont Behavioral Healthcare (PBH) in North Carolina indicating that Mr. Ford had been adjudicated incompetent in North Carolina and that PBH was appointed as his guardian. On September 30, 2010, the ALJ received a letter from claimant in which claimant stated that she did not want Mr. Ford to be required to appear at the regular hearing. On December 2, 2010, the ALJ dismissed Christopher S. Ford as a respondent, over the objection of CFI. The ALJ cited the fact that Mr. Ford was incompetent and would likely not be able to appear at the regular hearing. Apparently no hearing was held before the ALJ dismissed Mr. Ford as a respondent, and no party appealed the ALJ's Order. The ALJ indicated it would still take up the issue as to whether claimant was employed by Mr. Ford or by CFI, but that no award would be entered against Mr. Ford.

Claimant testified at her deposition that on June 3, 2004, she injured herself while in the process of lifting Mr. Ford into his Dodge Ram truck at the University of Kansas Medical Center. Claimant lifts Mr. Ford by lifting him under his armpits into the truck. Mr. Ford is six feet tall and weighs two hundred pounds. As claimant was lifting Mr. Ford, she heard her bones in her neck crack. Claimant's vision went white and she felt like lightning was going from her neck to her head. However, it was a "very, very minor, minor, minor feeling"[4] and she did not feel any pain. Neither claimant nor Mr. Ford fell to the ground. At the regular hearing, claimant acknowledged that she did not strike her head, neck or shoulders.

A few days after the June 3, 2004, incident, claimant's left shoulder began hurting. She sought treatment for the shoulder from Dr. Elliott, a chiropractor. Claimant testified that respondent sent her to an occupational therapist in Lenexa, Kansas, whom she saw once. Claimant testified that she went to a doctor at Munson Army Hospital on Fort Leavenworth that summer and received an injection into her neck. At the deposition, claimant initially could not recall when she notified respondent of her injuries. Claimant later indicated at her deposition that on June 11, 2004, she told both respondent and

[4] R.H. Trans. (Oct. 6, 2011) at 120.

Independence, Inc., about the accident. At the regular hearing claimant indicated she reported the injury to respondent "about 10 days later."[5]

Claimant testified at her deposition that in June 2004, she was also working at a Subway restaurant in the Kansas City area. She was also receiving Social Security disability benefits because of problems, including seizures, stemming from a closed head injury. Claimant testified at the regular hearing that she is competent.

Claimant alleges she suffered numerous injuries as a result of the accident on June 3, 2004. At her deposition, claimant testified that she injured her spinal cord. She alleges she suffered multiple fractures of her cervical spine and that the bones at the top of her cervical spine pressed against her low brain. This in turn caused a brain stem injury. She also alleged a compression to her back between her shoulder blades and a low back compression. The compression between her shoulder blades caused back spasms in her left shoulder. Claimant also alleged she had an autonomic nervous system disorder as a result of the incident on June 3, 2004. She also asserted that she had a dystonia in the left arm and that she had post traumatic stress syndrome.

At the regular hearing, claimant testified her head was no longer centered, that her left side appears to be shorter and that she has hyperreflexia. She has seizures, mostly on the left side in her temple that make her "act weird."[6] Claimant testified that occasionally her bowels will stop moving. She feels as though she is failing, and her heartbeat will change. Claimant does not interact with the world the way she used to before the June 3, 2004, incident and she has pain in her back. At one point claimant testified she has difficulties producing a thought. Her brain will stop analyzing which causes her to get sleepy. On one occasion she was found sleeping on a sidewalk next to her van.

Claimant admitted that no physician indicated her hyperreflexia, seizures, funny feelings in her head, autonomic nervous system disorder, heart problems, and compressed fractures in her neck or back were caused by the incident on June 3, 2004. She did testify that her shoulder pain was attributed to the incident by a Dr. Kwan, an acupuncturist. Dr. Kwan's records were never made part of the record, nor did Dr. Kwan testify. According to claimant, Dr. Dean, a physician claimant saw after she moved to North Carolina in 2005, said it was not possible to determine whether her closed head injury and brain stem injury resulted from the incident.

Claimant obtained subpoenas for witnesses signed on August 4, 2011, by former Director of Workers Compensation Larry Karns. Claimant then sent the subpoenas to the

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[5] R.H. Trans. (Aug 17, 2011) at 15.

[6] *Id.*, at 29.

individuals she intended to call as witnesses. The subpoenas required the witnesses to appear at the August 17, 2011, regular hearing. On August 8, 2011, ALJ Hursh sent a letter to each witness, a copy of which was sent to claimant and respondent's counsel, telling the witnesses they did not have to appear at the regular hearing. The letters stated the witnesses' testimony would be taken by claimant at a later date if their testimony was necessary.

At the regular hearing on August 17, 2011, claimant appeared in person and represented herself. Because of the length of claimant's testimony, the regular hearing was not completed and was continued on October 6, 2011. At the regular hearing on August 17, 2011, claimant requested that the ALJ subpoena certain witnesses to testify on her behalf. The ALJ went through claimant's list of witnesses and made a determination as to which witnesses could testify. He explained to claimant that she would have to depose the witnesses that he approved. The ALJ would not let claimant depose former Kansas Attorney General Steve Six, Kansas Department of Labor employee Tim Triggs, two attorneys claimant consulted with, the Internal Revenue Service and claimant's former Kansas state senator, because their testimony would not be relevant. He did indicate she could take the testimony of numerous other witnesses, including all of her treating physicians. Claimant indicated she did not know what the ALJ meant that the witnesses needed to be deposed and that she did not know where many of the witnesses were located. Claimant never deposed any witnesses.

At the conclusion of the August 17, 2011, regular hearing, the ALJ set a terminal date for claimant of October 16, 2011. He told claimant that was the date she had to obtain the testimony of her witnesses and gave her the telephone number of the ombudsmen with the Division of Workers Compensation to obtain advice on how to arrange for a court reporter and take a deposition. ALJ Hursh advised claimant if she needed more time, to send him a letter requesting an extension of the terminal date. Claimant never requested an extension.

On August 18, 2011, the ALJ entered an "Order – Terminal Dates," in which the ALJ set claimant's terminal date as October 17, 2011.

At her deposition, claimant testified that her employment with respondent was automatic and she did not have to apply for employment with respondent. At the regular hearing on October 6, 2011, claimant admitted respondent never asked her to become Mr. Ford's caregiver. Claimant also introduced an exhibit entitled "Employer's Answer to Claim for Wages."[7] Apparently, claimant filed a claim against Independence, Inc., for wages from May 13, 2004, through June 10, 2004. The Employer's Answer to Claim for Wages was filed by Independence, Inc., with the Kansas Department of Human Resources denying claimant's claim for wages.

[7] R.H. Trans. (Oct. 6, 2011), Cl. Ex. 2.

On October 17, 2011, ALJ Hursh received handwritten notes/letters along with a number of documents and a DVD from claimant. A copy of the handwritten notes, as well as a DVD and documents, were sent or given to respondent's attorney by claimant. Respondent's attorney sent a letter dated October 18, 2011, to the ALJ, objecting to the documents and DVD on the grounds they lacked foundation and were hearsay. A copy of the letter was sent to claimant. In a letter to the parties dated October 19, 2011, ALJ Hursh stated:

> Ms. Clonch was advised of the procedures for submitting evidence in her case and had the opportunity through her regular hearing testimony to submit documentary evidence for which she could provide foundation. Ms. Clonch was advised that evidence from other witnesses had to be obtained by deposition. At no time was Ms. Clonch given any indication she could simply drop off documentary evidence with the court and have it be considered a part of the record.
>
> Mr. Bloskey's objections in his October 18, 2011 letter are sustained and the documents and DVD left by Ms. Clonch shall not be considered a part of the record in this case.
>
> Ms. Clonch's terminal date has now expired. The only evidence received from the claimant that will be considered part of the record are the transcripts of her regular hearing testimony taken on August 17, 2011 and October 6, 2011 and the exhibits attached to those transcripts.

On November 11, 2011, respondent took the deposition of Diane Heichel, Director of Administration for respondent. Respondent attempted to take Ms. Heichel's testimony at the October 6, 2011, regular hearing. However, claimant indicated she was not prepared to cross-examine Ms. Heichel. The ALJ required respondent to depose Ms. Heichel at a later date. Respondent sent notice of the deposition to claimant at an address used by claimant, 1896 Greensboro Street Extension, Lexington, North Carolina 27295, and also sent notice to claimant at an address previously used by claimant, 220 West 59th Street, Kansas City, Missouri 64113. Claimant did not appear at the deposition.

Ms. Heichel testified that respondent serves as a payroll agent for "consumers" who receive personal or in-home care or counseling. The consumer selects a personal care attendant (PCA) to provide care for the consumer or to the disabled person. The consumer or disabled person can have multiple PCAs over a period of time. Ms. Heichel testified that when a consumer selects a new PCA that PCA is not automatically an employee of respondent. Before a PCA can become an employee of respondent, he or she must complete an application and appropriate tax forms. The applicant must be approved and accepted by respondent as an employee before wages and benefits are provided. Ms. Heichel testified that the relationship between a consumer and a payroll agency can exist independently of a relationship between a payroll agency and the PCA.

According to Ms. Heichel, claimant was not an employee of respondent on June 3, 2004, as she had not completed the necessary documents. The records of respondent show that claimant was hired on August 25, 2004. However, the payroll records of respondent indicate claimant was paid retroactively by respondent to May 13, 2004, which was the date she began working as Mr. Ford's PCA.

At Ms. Heichel's deposition, Exhibit 3 contained an e-mail dated June 18, 2004, from claimant to Regina Martin, a counselor employed by respondent. The e-mail makes reference to an employer's injury report that was sent to claimant. The e-mail does not state claimant was injured and the record does not contain an injury report during that time period.

The ALJ found claimant was an employee of respondent on June 3, 2004. However, the ALJ determined claimant failed to prove an injury arising out of and in the course of her employment with respondent. ALJ Hursh determined claimant did not give notice to respondent of the accident within ten days, nor was there just cause for extending the time to give notice from ten days to 75 days for just cause.

In a document entitled "Appeal the Award," which the Board considered as an application for review, claimant indicated she needed legal representation. She stated her workers compensation file was not submitted and that she was not allowed one witness or subpoenaed person in the courtroom during the hearings.

The Board received a letter from claimant, which it treated as claimant's brief, on January 19, 2012. She indicated in the letter that she did not know how to take a deposition, that she does not understand workers compensation law and is not capable of being pro se. At oral argument, claimant indicated she attempted to employ an attorney, but none of the attorneys she spoke to were willing to represent her. Claimant also stated that on several occasions she consulted with an ombudsman in the Division of Workers Compensation, Kansas Department of Labor.

PRINCIPLES OF LAW

A claimant in a workers compensation proceeding has the burden of proof to establish by a preponderance of the credible evidence the right to an award of compensation and to prove the various conditions on which his or her right depends.[8] A claimant must establish that his or her personal injury was caused by an "accident arising out of and in the course of employment."[9] "'Burden of proof' means the burden of a party to persuade the trier of facts by a preponderance of the credible evidence that such party's

[8] K.S.A. 2003 Supp. 44-501(a); *Perez v. IBP, Inc.*, 16 Kan. App. 2d 277, 826 P.2d 520 (1991).

[9] K.S.A. 2003 Supp. 44-501(a).

position on an issue is more probably true than not true on the basis of the whole record."[10] The phrase "arising out of" employment requires some causal connection between the injury and the employment.[11] The existence, nature and extent of the disability of an injured workman is a question of fact.[12] The finder of fact is free to consider all the evidence and decide for itself the percent of disability the claimant suffers.[13]

It is the function of the trier of fact to decide which testimony is more accurate and/or credible and to adjust the medical testimony along with the testimony of the claimant and any other testimony that may be relevant to the question of disability. The trier of fact is not bound by medical evidence presented in the case and has a responsibility of making its own determination.[14]

K.S.A. 2003 Supp. 44-508(b) states in pertinent part: "'Workman' or 'employee' or 'worker' means any person who has entered into the employment of or works under any contract of service or apprenticeship with an employer."

In *Permenter*,[15] a Board Member stated:

> In workers compensation across the country, traditionally, most workers compensation acts insist upon the existence of a "contract of hire, express or implied," as an essential feature of an employment relationship. [*Footnote citing* 3 *Larson's Workers' Compensation Law* § 64.01 (2004).] The Kansas Workers Compensation Act is no exception.
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> The primary test used by the courts in determining whether the employer-employee relationship exists is whether the employer has the right of control and supervision over the work of the alleged employee and the right to direct the manner in which the work is to be performed, as well as the result that is to be accomplished. . . .

In *Davenport Pastures*,[16] the Kansas Supreme Court stated:

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[10] K.S.A. 2003 Supp. 44-508(g).

[11] *Pinkston v. Rice Motor Co.*, 180 Kan. 295, 303 P.2d 197 (1956).

[12] *Armstrong v. City of Wichita*, 21 Kan. App. 2d 750, 907 P.2d 923 (1995).

[13] *Carter v. Koch Engineering*, 12 Kan. App. 2d 74, 76, 735 P.2d 247, *rev. denied* 241 Kan. 838 (1987).

[14] *Tovar v. IBP, Inc.*, 15 Kan. App. 2d 782, 817 P.2d 212, *rev. denied* 249 Kan. 778 (1991).

[15] *Permenter v. House of Hope, Inc.,* No. 1,020,508, 2005 WL 1046576 (Kan. WCAB Apr. 2005).

[16] *Davenport Pastures v. Board of Morris County Comm'rs*, 291 Kan. 132, 139, 238 P.3d 731 (2010).

> "It is axiomatic that '[a] fair trial in a fair tribunal is a basic requirement of due process.'" *Caperton v. A.T. Massey Coal Co., Inc.*, ___ U.S. ___, 129 S. Ct. 2252, 2259, 173 L. Ed. 2d 1208 (2009). This principle applies to administrative agencies which adjudicate as well as to courts. *Withrow v. Larkin*, 421 U.S. 35, 47, 43 L. Ed. 2d 712, 95 S. Ct. 1456 (1975). . . .

In *Mangiaracina*,[17] the Kansas Court of Appeals stated:

> A pro se litigant in a civil case is required to follow the same rules of procedure and evidence which are binding upon a litigant who is represented by counsel. Our legal system cannot function on any basis other than equal treatment of all litigants. To have different rules for different classes of litigants is untenable. A party in civil litigation cannot expect the trial judge or an attorney for the other party to advise him or her of the law or court rules, or to see that his or her case is properly presented to the court. A pro se litigant in a civil case cannot be given either an advantage or a disadvantage solely because of proceeding pro se. . . .

ANALYSIS

Claimant desired to be represented by an attorney, but could not find one willing to do so. As stated in *Mangiaracina*, claimant could not expect the ALJ or respondent's attorney to provide her legal advice or to see that her case was properly presented. Claimant sought, and apparently received, advice from an ombudsman. The ALJ required respondent to take the testimony of Ms. Heichel by deposition, in part, because he would not allow claimant to have her witnesses testify at the regular hearing.

The ALJ at the regular hearing on August 17, 2011, informed claimant that her terminal date was October 16, 2011, and in an Order – Terminal Dates dated August 18, 2011, set claimant's terminal date for October 17, 2011. Claimant had ample opportunity to take depositions of witnesses, but failed to do so. She attempted to submit evidence without laying a proper foundation or complying with the procedural requirements of the Kansas Workers Compensation Act or complying with the administrative rules of the Director of Workers Compensation. Although claimant is a pro se litigant, she was bound to follow the same rules of procedure and evidence that respondent, which was represented by counsel, is required to follow.

The Board finds claimant received a fair and impartial hearing. The ALJ did not treat claimant in such a manner that she was placed at a disadvantage. The ALJ did not err by sustaining respondent's objections to the items claimant submitted after the regular hearings. Nor did the ALJ deny claimant a fair trial or err by requiring claimant to depose her witnesses and not allowing her to take the testimony of witnesses whose testimony the

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[17] *Mangiaracina v. Gutierrez*, 11 Kan. App. 2d 594, 595-96, 730 P.2d 1109 (1986).

ALJ deemed irrelevant. Claimant could have deposed her witnesses, but for whatever reason, failed to do so.

Respondent argued that on claimant's date of accident, June 3, 2004, she was not respondent's employee. Claimant began caring for Mr. Ford in May 2004, but did not complete the necessary paperwork to become an employee of respondent until August 2004. No contract for employment existed between claimant and respondent until August 25, 2004. On June 3, 2004, respondent had no right to control the work activities of claimant, nor did respondent supervise claimant. Claimant was uncertain if her employer was respondent or Independence, Inc., and went so far as to file a wage claim against Independence, Inc. The Board finds that on June 3, 2004, no employer-employee relationship existed between respondent and claimant.

The Board affirms the finding of the ALJ that claimant failed to prove by a preponderance of the evidence that she sustained an injury arising out of and in the course of her employment. Claimant testified that she suffered significant injuries that resulted from a minor incident. Other than her testimony, claimant produced minimal evidence of a work-related injury. Claimant failed to prove that it was probably more true than not that she sustained an injury on June 3, 2004, arising out of and in the course of her employment.

The ALJ found claimant failed to give timely notice of an injury to respondent. K.S.A. 44-520 requires that the injured worker give his or her employer notice of the accident within ten days after it occurs. This notice period can be extended to 75 days for just cause. Claimant testified she immediately felt bones in her neck crack and she saw white. She also sought chiropractic treatment shortly after the incident on June 3, 2004. Claimant's testimony as to when she reported her alleged accident was inconsistent. The e-mail from claimant to Ms. Martin was June 18, 2004, which was outside the ten-day period. There is insufficient evidence to prove claimant gave notice within ten days after the alleged accident. Therefore, the Board affirms the ALJ's finding that claimant did not give timely notice of an injury to respondent within ten days after June 3, 2004, nor was there just cause for extending the time from ten days to 75 days.

CONCLUSION

1. Claimant received a fair and impartial hearing. The ALJ did not err by not admitting the items claimant submitted after the regular hearings as evidence. Nor did the ALJ err by requiring claimant to depose her witnesses and not allowing claimant to subpoena certain witnesses whose testimony the ALJ deemed was not relevant. There was no showing or proffer by claimant as to what those witnesses might say that would be relevant to this case.

2. On June 3, 2004, the date of claimant's alleged accident, no employer-employee relationship existed between respondent and claimant.

3. Claimant failed to prove by a preponderance of the evidence that she sustained an injury arising out of and in the course of her employment.

4. Claimant failed to give timely notice of the alleged accident to respondent.

5. The issues of whether claimant suffered a permanent impairment as a result of the alleged accident, the nature and extent of claimant's disability and claimant's average weekly wage are moot.

As required by the Workers Compensation Act, all five members of the Board have considered the evidence and issues presented in this appeal.[18] Accordingly, the findings and conclusions set forth above reflect the majority's decision and the signatures below attest that this decision is that of the majority.

AWARD

WHEREFORE, the Board reverses that part of the December 16, 2011, Award entered by ALJ Hursh that found an employer-employee relationship existed between respondent and claimant on June 3, 2004. The Board affirms the remainder of the Award entered by ALJ Hursh.

IT IS SO ORDERED.

Dated this ____ day of May, 2012.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

[18] K.S.A. 2011 Supp. 44-555c(k).

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Kenneth J. Hursh, Administrative Law Judge